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July 10, 2012

TO BE FILED UNDER SEAL

BY FACIMILE (718) 613-2236 AND BY MAIL

The Honorable Brian M. Cogan
United States District Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Roe v. Doe, 98 CR 1101 (ILG)

Dear Judge Cogan:

On behalf of John Doe, we respectfully submit this letter as a second supplement to our application for an Order To Show Cause why Richard Roe and Richard Lerner should not be held in contempt for illegally disclosing sealed information concerning Doe to the media. Recently, *The Miami Herald* published an article containing sealed information in violation of the Court of Appeals' and this Court's orders. See Ex. 1, *The Miami Herald*, "Trump tower promoter's criminal record was concealed by feds," dated July 1, 2012, (the "Article"). This follows the newspaper's letter to Chief Judge Carol B. Amon, dated March 8, 2012, styled as a "Request to Unseal All Hidden Dockets in the Eastern District of New York." There can be no doubt that this letter and the Article are the handiwork of Roe and Lerner yet again.

Specifically, the Article publicly discloses sealed information in the following ways:

- It discloses John Doe's true identity and displays a half-page photograph identifying him by face.
- It references the publicly - and illegally - filed civil RICO complaint filed by Roe on May 10, 2010 in the Southern District of New York (the "SDNY Complaint") and the sealed information contained in the SDNY Complaint. See Ex. 1, at 3 ("Not until

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Page 2 of 4

three years later did those details emerge with the civil racketeering suit filed by a finance director of Bayrock, targeting Trump tower and other ventures. *Among the disclosures*: Sater had been cooperating with the feds against other suspects, among them crime syndicate soldiers”(emphasis added). Due to the sensitive nature of the sealed information contained in the SDNY Complaint, Judge Buchwald had ordered the complaint removed from the docket and ordered that Roe file an amended version of the complaint which did not contain confidential and sealed information. Judge Glasser also entered a temporary restraining order restraining Roe and his “clients” from disseminating the sealed and confidential documents contained in the complaint. Notwithstanding all of this, Roe and Lerner disclosed the very information that both Judge Buchwald and Judge Glasser ordered to be removed from the SDNY Complaint.

- It references a brief filed under seal with the United States Supreme Court concerning the sealed and confidential documents at issue. *See* Ex. 1, at 1 (“In a rare move, lawyers are asking the U.S. Supreme Court to intercede in a bitter debate over the practice of concealing criminal cases from the public.”). Since the brief was filed under seal, the only way *The Miami Herald* could have learned about the brief was through Roe, Lerner, or their agents.
- Finally - and most egregiously - it discusses the contents of the sealed documents that the Court of Appeals has ordered to remain under seal. *See* Ex. 1, at 2 (“The *secret documents* – leaked to the lawyers – showed that Sater had helped put away dangerous criminals for prosecutors.”)(emphasis added).

In short, the Article references John Doe by name and by face, connects him to all the sealed proceedings, and discloses the contents of the sealed documents at issue in these proceedings. It is undisputed that Roe and Lerner, or their agents, gave *The Miami Herald* the information for this article, perhaps even giving illegal face-to-face interviews, as the article quotes Paul Cassell, a member of their legal team who has been copied on numerous correspondence in this sealing litigation. *See* Ex. 2, Court of Appeals’ Order, dated February 10, 2011, at 2 (All parties are temporarily enjoined from disseminating or distributing in any manner and in any court, proceeding or forum any documents filed in this appeal...or in the related proceedings in the Eastern and Southern Districts of New York, or the contents thereof, to any member of the public or media...).¹ Consequently, Roe and Lerner, or their agents have – once again – brazenly violated unambiguous court orders.

Roe and Lerner’s conduct gets more brazen with every article published. Even the threat of criminal prosecution has not persuaded them to begin complying with the Court of Appeals’

¹ Your Honor has jurisdiction to enforce the Court of Appeals’ February 10th Order, in addition to the February 14th Order. *See* Court of Appeals’ Order, dated February 14, 2011 (Court of Appeals assigned a District Judge to “implement and oversee compliance with [its] orders...”)(emphasis added).

Page 3 of 4

and this Court's orders. And although couched as a First Amendment issue which "raises serious questions about our judicial system," Roe and Lerner's conduct during the last few years -- as Roe admitted himself -- has been nothing more than an extortion campaign against legitimate law firms and their insurance carriers. See Court of Appeals Order, dated June 29, 2011, at 7 (Court of Appeals finding that Roe and Lerner's tactic of publicly disclosing the PSR was nothing more than "a tool to intimidate and harass Doe by subjecting him to danger"). If this litigation was truly about a legitimate constitutional issue, Roe and Lerner ought to proceed through the normal legal channels and only disclose the sealed information *if they were to prevail* in their litigation. Thus far, however, they have lost the right to disclose sealed information at every stage of the litigation. Yet, Roe and Lerner have ignored these losses and proceeded with their extortion campaign. A finding of civil contempt -- and an order forcing Roe and Lerner to compensate Doe for the legal fees he has had to spend to date to constantly highlight violations of unambiguous court orders -- would be an important first step to bring some semblance of justice to this case, and remedy the harm that Roe and Lerner have inflicted on Doe through their egregious extortion campaign.

Finally, we are hereby copying Assistant U.S. Attorney Stephen Green, the prosecutor in the United States Attorney's Office for the Northern District who was recently assigned to the criminal contempt investigation of Roe and Lerner.

Respectfully Submitted,



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Page 4 of 4

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